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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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8 *Counsel for Plaintiff and all
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9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11
12 JACOB PEREIRA, on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 v.

15 NEW VITALITY CORPORATION, a
16 New York corporation; NAC
VITAMIN COMPANY INC., a New
17 York corporation; NAC MARKETING
COMPANY, LLC, a Delaware limited
18 liability company; and DOES 1-10,
inclusive,

19 Defendants.
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Case No.

CV 12-6428-PA
CLASS ACTION
COMPLAINT FOR: (VBKx)

**1. VIOLATION OF PENAL CODE §
630, et seq;**

**2. VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAWS
("UCL"); Bus. & Prof. Code §17200
et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff Jacob Pereira, on behalf of himself and all others similarly situated,
2 alleges the following upon information and belief based upon investigation of
3 counsel, except as to his own acts, which he alleges upon personal knowledge:

4 **PARTIES**

5 1. Plaintiff Jacob Pereira is a resident of Los Angeles County, California and
6 contacted Defendants via their customer service hotline in the summer of
7 2012 to gain information about their product, "Ageless Male," including how
8 it worked, if it was safe, and how long it lasted. Without his knowledge or
9 consent, and without any disclosure whatsoever, Defendants intentionally
10 recorded the confidential telephone call.

11 2. Plaintiff is informed and believes, and thereon alleges, Defendant New
12 Vitality Corporation is a New York corporation with its principal place of
13 business in Suffolk county, New York. Plaintiff is informed and believes,
14 and thereon alleges, Defendant NAC Vitamin Company Inc. is a New York
15 corporation with its principal place of business in Nassau county, New York.
16 Plaintiff is informed and believes, and thereon alleges, Defendant NAC
17 Marketing Company, LLC is a Delaware limited liability company.
18 Defendants New Vitality Corporation, NAC Vitamins Company Inc., and
19 NAC Marketing Company, LLC make a practice of intentionally recording
20 the confidential telephone communications of their customers, without their
21 knowledge or consent.

22 3. The true names and capacities of the Defendants sued herein as DOES 1
23 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues
24 such Defendants by fictitious names. Each of the Defendants designated
25 herein as a DOE is legally responsible for the unlawful acts alleged herein.
26 Plaintiff will seek leave of Court to amend this Complaint to reflect the true
27 names and capacities of the DOE Defendants when such identities become
28 known.

- 1 4. At all relevant times, each and every Defendant was acting as an agent and/or
2 employee of each of the other Defendants and was acting within the course
3 and/or scope of said agency and/or employment with the full knowledge and
4 consent of each of the Defendants. Each of the acts and/or omissions
5 complained of herein were alleged and made known to, and ratified by, each
6 of the other Defendants.

7 JURISDICTION AND VENUE

- 8 5. A Court has diversity jurisdiction over this class action pursuant to 28 U.S.C.
9 § 1332 as amended by the Class Action Fairness Act of 2005 because the
10 amount in controversy exceeds \$5,000,000, exclusive of interest and costs,
11 and is a class action in which some members of the class are citizens of
12 different states than the Defendant. *See* 28 U.S.C. §1332(d)(2)(A).
13 6. This Court also has personal jurisdiction over Defendant because Defendant
14 currently does business in this state.
15 7. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because
16 Defendant is subject to personal jurisdiction in this District and a substantial
17 portion of the conduct complained of herein occurred in this District.

18 FACTUAL ALLEGATIONS

- 19 8. In the summer of 2012, Plaintiff called Defendants' customer service
20 telephone number (1-888-661-7134) to gain information about their product,
21 "Ageless Male," how it worked, if it was safe, and how long it lasted.
22 Plaintiff was transferred to a customer service representative and Plaintiff
23 proceeded to ask several questions about the product. After gaining the
24 information Plaintiff needed to make an informed decision about potentially
25 ordering Defendants' product, Plaintiff concluded his telephone conversation
26 with the representative and hung up.
27 9. Plaintiff was not aware that the call was being recorded. Defendants did not,
28 at any point during either the recorded message at the beginning of the call or

1 during the telephone conversation with Defendants' customer service
2 representative, advise Plaintiff that the call was being recorded. Plaintiff did
3 not give either express or implied consent to the recording.

4 10. After completing his call, Plaintiff learned that Defendants make a habit and
5 practice of recording every incoming telephone call to their customer service
6 line. Such communications are considered to be confidential to those
7 customers and potential customers who call Defendants because such
8 communications are carried on under circumstances that reasonably indicate
9 that the customer-party to the communication desires it to be confined to
10 them and Defendants.

11 11. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing violations of
12 privacy of hundreds of thousands of people nationwide and to recover
13 damages because of this unlawful practice.

14 CLASS DEFINITIONS AND CLASS ALLEGATIONS

15 12. Plaintiff brings this action on behalf of himself, on behalf of all others
16 similarly situated, as members of the class (referred to hereafter as the
17 "Class") defined as follows:

18 California Class: The class the Plaintiff seeks to represent consists of all
19 persons who are citizens or residents of California whose telephone
20 conversation with Defendants was intentionally recorded or monitored by
21 Defendants, without knowledge or consent, during the four years preceding
22 the filing of this complaint through the date of final judgment in this action.
23 Excluded from the class are Defendant, any parent, subsidiary, affiliate, or
24 controlled person of Defendant, as well as the officers and directors of
25 Defendant, and the immediate family member of any such person. Also
26 excluded is any judge who may preside over this case.

27 13. This action is brought and may be properly maintained as a class action
28 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and

1 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,
2 predominance and superiority requirements of those provisions.

3 14. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
4 joinder of all of its members is impractical. While the exact number and
5 identities of Class members are unknown to Plaintiff at this time and can only
6 be ascertained through appropriate discovery, Plaintiff is informed and
7 believes the Class includes thousands of members. Plaintiff alleges that the
8 Class may be ascertained by the records maintained by Defendant.

9 15. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all
10 members of the Class which predominate over any questions affecting only
11 individual members of the Class. These common legal and factual questions,
12 which do not vary from class member to class member, and which may be
13 determined without reference to the individual circumstances of any class
14 member, include, but are not limited to, the following:

- 15 (a) Whether Defendants intentionally record or monitor confidential
- 16 telephone communications;
- 17 (b) Whether Defendants obtain consent before intentionally
- 18 recording or monitoring confidential telephone communications;
- 19 (c) Whether Defendants' conduct constitutes a violation of
- 20 California Penal Code sections 631(a), 632(a) and/ or 637;
- 21 (d) Whether Defendants' conduct is "unfair" under Bus. & Prof.
- 22 Code Section 17200;
- 23 (e) Whether, as a result of Defendants' misconduct, Plaintiff and the
- 24 Class are entitled to damages, restitution, equitable relief and
- 25 other relief, and the amount and nature of such relief.

26 16. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the
27 members of the Class. Plaintiff and all members of the Class have sustained
28 injury and are facing irreparable harm arising out of Defendants' common

1 course of conduct as complained of herein. The losses of each member of the
2 Class were caused directly by Defendants' wrongful conduct as alleged
3 herein.

4 17. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the
5 interests of the members of the Class. Plaintiff has retained attorneys
6 experienced in the prosecution of class actions, including complex consumer
7 and mass tort litigation.

8 18. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
9 methods of fair and efficient adjudication of this controversy, since individual
10 litigation of the claims of all Class members is impracticable. Even if every
11 Class member could afford individual litigation, the court system could not.
12 It would be unduly burdensome to the courts in which individual litigation of
13 numerous issues would proceed. Individualized litigation would also present
14 the potential for varying, inconsistent, or contradictory judgments and would
15 magnify the delay and expense to all parties and to the court system resulting
16 from multiple trials of the same complex factual issues. By contrast, the
17 conduct of this action as a class action, with respect to some or all of the
18 issues presented herein, presents fewer management difficulties, conserves
19 the resources of the parties and of the court system, and protects the rights of
20 each Class member.

21 19. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
22 thousands of individual Class members would create the risk of inconsistent
23 or varying adjudications with respect to, among other things, the need for and
24 the nature of proper notice, which Defendants must provide to all Class
25 members.

26 20. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
27 individual class members would create a risk of adjudications with respect to
28 them that would, as a practical matter, be dispositive of the interests of the

1 other Class members not parties to such adjudications or that would
 2 substantially impair or impede the ability of such non-party Class members to
 3 protect their interests.

- 4 21. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects
 5 generally applicable to the Class, thereby making appropriate final injunctive
 6 relief with regard to the members of the Class as a whole.

7 **FIRST CAUSE OF ACTION**

8 **Penal Code § 630, et seq.**

9 **(By Plaintiff and the Class Against All Defendants)**

- 10 22. Plaintiff hereby incorporates paragraphs 1-21 above as if set forth in full.

- 11 23. As part of the California Invasion of Privacy Act, the Legislature enacted
 12 section 632 of the California Penal Code in 1967 to address the growing
 13 concern that “advances in science and technology have led to the
 14 development of new devices and techniques for the purpose of eavesdropping
 15 upon private communications and that the invasion of privacy resulting from
 16 the continual and increasing use of such devices and techniques has created a
 17 serious threat to the free exercise of personal liberties and cannot be tolerated
 18 in a free and civilized society.” Cal. Penal Code § 630.

- 19 24. Section 632 prohibits the intentional and unconsented recording, monitoring,
 20 and/or eavesdropping upon confidential telephone communications by means
 21 of any electronic amplifying or recording device, including a wiretap.
 22 “Intentional” within the context of section 632 merely requires that a
 23 defendant intend that the confidential communication be recorded, monitored,
 24 and/or eavesdropped upon. *See People v. Superior Court of Los Angeles*
 25 *County*, 70 Cal. 2d 123, 133 (1969). No other wrongful or surreptitious
 26 intent is required, only that the defendant intended to record the confidential
 27 communication is necessary.
 28

- 1 25. Plaintiff is informed and believes, and thereon alleges that Defendants
2 knowingly violated Cal. Pen Code § 632 by habitually, and making a practice
3 of, recording, monitoring, and/or eavesdropping upon every confidential
4 communication of its customers and potential customers. Such
5 communications are considered to be confidential to those customers and
6 potential customers who call Defendants because such communications are
7 carried on under circumstances that reasonably indicate that the
8 customer-party to the communication desires it to be confined to them and
9 Defendants.
- 10 26. Plaintiff is informed and believes, and thereon alleges that all of Defendants'
11 employees are trained and/or directed to record all confidential
12 communications with customers and potential customers by means of
13 recording device and/or wiretap. Such employees are agents of Defendants
14 and were acting within the course and scope of employment of Defendants
15 when such confidential communications were recorded, monitored, and/or
16 eavesdropped upon without Plaintiff's or the Class's knowledge.
- 17 27. Plaintiff is informed and believes, and thereon alleges that the foregoing
18 recording, monitoring, and/or eavesdropping on said confidential
19 communications without consent via recording device, including but not
20 limited to wiretapping, constitutes a violation of California Penal Code
21 sections 631(a) and 632.6(a).
- 22 28. Based on the foregoing violations, Plaintiff and members of the Class are
23 entitled to and seek the statutory remedies provided in section 637.2 of the
24 California Penal Code, i.e. \$5,000 per statutory violation or three times the
25 amount of actual damages, whichever is higher.
- 26 29. Plaintiff and the Class further seek attorneys' fees pursuant to section 1021.5
27 of the California Code of Civil Procedure, or any other applicable statute, as
28 this action enforces an important right affecting the public's interest.

SECOND CAUSE OF ACTION

Business and Professions Code § 17200, et seq.

(Violation of the Unfair Competition Law)

(By Plaintiff and the Class Against All Defendants)

30. Plaintiff hereby incorporates paragraphs 1-29 above as if set forth in full.

31. California Business and Professions Code § 17200, et seq., (the “Unfair Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair competition” which includes any unlawful, unfair, or fraudulent business practice.

32. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or negligently engaged in unlawful, unfair or fraudulent business practices—but only that such practices occurred.

33. The intentional and unlawful recording, monitoring, and/or eavesdropping upon Plaintiff and the Class’s confidential communications with Defendants via recording device without consent is an unlawful, unfair, and fraudulent business practice as it violates section 630 et seq. of the Penal Code. These unlawful practices are thus prohibited by the UCL.

34. In carrying out such unlawful business practices, Defendants have violated sections 631(a) and 632.6(a) of the California Penal Code, and various other laws, regulations, statutes, and/or common law duties. Defendants’ business practices alleged herein, therefore, are unlawful within the meaning of the UCL.

35. The harm to Plaintiff and members of the public outweighs the utility of Defendants’ practices and, consequently, Defendants’ practices, as set forth fully above, constitute an unfair business act or practice within the meaning of the UCL.

36. Defendants’ practices are additionally unfair because they have caused Plaintiff and the Class substantial injury, which is not outweighed by any

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1 countervailing benefits to consumers, Defendants' business, or to
2 competition, and is not an injury the consumers themselves could have
3 reasonably avoided.

4 37. Defendants' practices, as set forth above, are unlawful business practices
5 because they violate section 630 et seq. of the Penal Code and constitute
6 unscrupulous, unethical, and substantially injurious conduct to consumers.
7 Consequently, Defendants' practices constitute an unlawful and unfair
8 business practice within the meaning of the UCL.

9 38. Pursuant to California Business and Professions Code § 17204, an action for
10 unfair competition may be brought by any "person . . . who has suffered
11 injury in fact and has lost money or property as a result of such unfair
12 competition." Plaintiff and the Class are entitled to statutory damages or
13 three times the amount of actual damages, whichever is higher, pursuant to
14 section 637.2(a) and as such have suffered harm within the meaning of
15 section 630 et seq. of the Penal Code.

16 39. The unlawful, unfair, and fraudulent business practices of Defendants are
17 ongoing and present a continuing threat to members of the public.

18 40. Pursuant to the UCL, Plaintiff and the Class are entitled to and seek
19 preliminary and permanent injunctive relief ordering Defendants to cease
20 these unlawful business practices.

21 PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for
23 relief and judgment as follows:


24 1. For preliminary and permanent injunctive relief enjoining Defendants,
25 their agents, servants and employees, and all persons acting in concert with them,
26 from engaging in, and continuing to engage in, the unfair, unlawful and/or
27 fraudulent business practices alleged above and that may yet be discovered in the
28 prosecution of this action;

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- 1 2. For certification of the putative class;
- 2 3. For restitution and disgorgement of all money or property wrongfully
- 3 obtained by Defendant by means of its herein-alleged unlawful, unfair, and
- 4 fraudulent business practices;
- 5 4. For an accounting by Defendant for any and all profits derived by
- 6 Defendant from its herein-alleged unlawful, unfair, and/or fraudulent conduct
- 7 and/or business practices;
- 8 5. An award of statutory damages of \$5,000 per violation pursuant to
- 9 section 637.2(a) of the Penal Code;
- 10 6. An award of general damages according to proof;
- 11 7. An award of special damages according to proof;
- 12 8. Exemplary damages;
- 13 9. For attorneys' fees and expenses pursuant to all applicable laws
- 14 including, without limitation, Code of Civil Procedure §1021.5 and the common law
- 15 private attorney general doctrine;
- 16 10. For costs of suit; and
- 17 11. For such other and further relief as the Court deems just and proper.
- 18

19 DATED: July 24, 2012

KIRTLAND & PACKARD LLP


20 By: 
21 MICHAEL LOUIS KELLY
22 BEHRAM V. PAREKH
23 HEATHER M. BAKER
24 Counsel for Plaintiff and all others
25 similarly situated
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all causes of actions so triable.

DATED: July 24, 2012

KIRTLAND & PACKARD LLP

By: 
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. BAKER
*Counsel for Plaintiff and all others
similarly situated*

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV12- 6428 PA (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

JACOB PEREIRA, on behalf of himself and all others
 similarly situated,

DEFENDANTS

NEW VITALITY CORPORATION, a New York corporation; NAC VITAMIN
 COMPANY INC., a New York corporation; NAC MARKETING COMPANY,
 LLC, a Delaware limited liability company; and DOES 1-10, inclusive,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michael Louis Kelly - SBN 82063
 Kirtland & Packard LLP
 2041 Rosecrans Avenue
 Third Floor
 El Segundo, CA 90245
 310-536-1000

Attorneys (If Known)**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No☒ MONEY DEMANDED IN COMPLAINT: \$ TBD**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. 1332(d)(2)(A) - Class Action Fairness Act Diversity. Inappropriate monitoring of telephone calls without consent.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number:

CV12-6428

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Pereira - Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New Vitality Corporation - New York; NAC Vitamin Company Inc - New York; NAC Marketing Company, LLC - Delaware

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Pereira - Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Michael Louis Kelly

Date July 23, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address:

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 Kirtland & Packard LLP
 2041 Rosecrans Avenue
 Third Floor
 El Segundo, CA 90245

COPY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JACOB PEREIRA, on behalf of himself and all others similarly
 situated,

CASE NUMBER

PLAINTIFF(S)

CV12-6428-PA (VBK)

v.

NEW VITALITY CORPORATION, a New York corporation; NAC VITAMIN
 COMPANY INC., a New York corporation; NAC MARKETING COMPANY,
 LLC, a Delaware limited liability company; and DOES 1-10, inclusive,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael Louis Kelly, whose address is 2041 Rosecrans Avenue, Third Floor, El Segundo, CA 90245. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

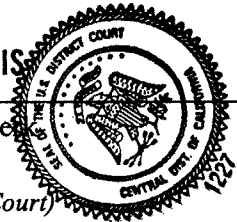
Dated: JUL 26 2012

By:

MARILYN DAVIS

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].